

APPENDIX C: LEGISLATION

25. Devils Tower National Monument

Establishment: Proclamation (No. 658) of September 24, 1906..... Page 171

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

[No. 658—Sept. 24, 1906—34 Stat. 3236]

WHEREAS, It is provided by section two of the Act of Congress, approved June 8, 1906, entitled, "An Act for the preservation of American Antiquities," "That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be National Monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the object to be protected;"

AND, WHEREAS, the lofty and isolated rock in the State of Wyoming, known as the "Devils Tower," situated upon the public lands owned and controlled by the United States is such an extraordinary example of the effect of erosion in the higher mountains as to be a natural wonder and an object of historic and great scientific interest and it appears that the public good would be promoted by reserving this tower as a National monument with as much land as may be necessary for the proper protection thereof;

NOW, THEREFORE, I, Theodore Roosevelt, President of the United States of America, by virtue of the power in me vested by section two of the aforesaid Act of Congress, do hereby set aside as the Devils Tower National Monument, the lofty and isolated rock situated in Crook County, Wyoming, more particularly located and described as follows, to-wit:

Section seven, and the north half of the northeast quarter, the northeast quarter of the northwest quarter and lot number one of section eighteen, in township fifty-three north, range sixty-five; the east half of section twelve and the north half of the northeast quarter of section thirteen in township fifty-three north, range sixty-six, all west of the Sixth Principal Meridian, as shown upon the map hereto attached and made a part of this proclamation.

Warning is hereby expressly given to all unauthorized persons not to appropriate, injure or destroy any feature of the natural tower hereby declared to be a National monument or to locate or settle upon any of the lands reserved and made a part of said monument by this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington, this 24th day of September, in the year of our Lord one thousand nine hundred and six and of the Independence of the United States the one hundred and thirty-first.

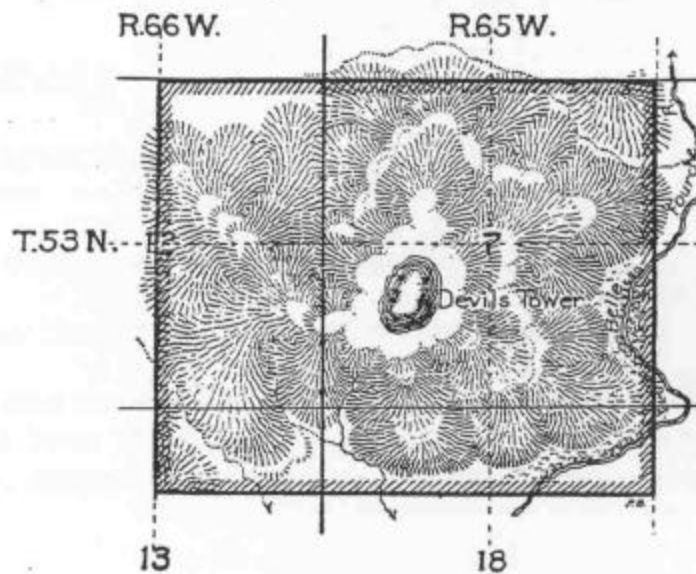
THEODORE ROOSEVELT.

By the President:

ALVEY A. ADEE,
Acting Secretary of State.

DEVILS TOWER NATIONAL MONUMENT

Embracing Sec. 7 and the N $\frac{1}{2}$ of NE $\frac{1}{4}$, the
NE $\frac{1}{4}$ of NW $\frac{1}{4}$ and lot No. 1 of Sec. 18 in T. 53 N.,
R. 65 ; the E $\frac{1}{2}$ of Sec. 12 and the N $\frac{1}{2}$ of NE $\frac{1}{4}$
of Sec. 13 in T. 53 N., R. 66 all West of the
6th Principal Meridian,
WYOMING:
Containing 1152.91 acres.



DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
W.A. Richards, Commissioner.

[MAP ATTACHED TO AND MADE A PART OF THE PROCLAMATION
DATED SEPTEMBER 24, 1906.]

11. Devils Tower National Monument

	Page
Addition of land to monument authorized in recognition of fiftieth anniversary of establishment; land exchanges authorized	
-----Act of August 9, 1955	405

An Act To provide recognition of the fiftieth anniversary of the Devils Tower National Monument, Wyoming, the first national monument, established by the President of the United States pursuant to the Antiquities Act of 1906; to authorize the addition of certain land to the monument, to permit land exchanges, and for other purposes, approved August 9, 1955 (69 Stat. 575)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in recognition of the fiftieth anniversary of the Devils Tower National Monument, Wyoming, the first national monument, established on September 24, 1906, by the President of the United States pursuant to the Antiquities Act of 1906, and in order to provide suitable public campground facilities and other developments for the public benefit and to facilitate administration thereof, the Devils Tower National Monument hereafter shall include the following described land comprising approximately one hundred and fifty-five acres, which the Secretary of the Interior is authorized to procure in such manner as he shall find to be in the public interest:

Devils Tower
National Monument.

34 Stat. 225.
16 U.S.C. 431-
433.

SIXTH PRINCIPAL MERIDIAN

Township 53 north, range 65 west, section 18, south half northeast quarter, southeast quarter northwest quarter, north half southeast quarter, those parts lying north of and within a loop of the left bank of the Belle Fourche River; southwest quarter northwest quarter, that part lying west of the left bank of the Belle Fourche River;

Township 53 north, range 66 west, section 13, south half northeast quarter.

SEC. 2. For land exchange purposes, the Secretary of the Interior is authorized to accept title to any land or interests therein situated within the area added to the national monument by this Act, and, in exchange for land or interests therein so accepted, to convey any national monument land or interests therein of approximately equal value situated in the northeast quarter of section 18, township 53 north, range 65 west, and lying east of the Belle Fourche River. National monument lands so conveyed for exchange purposes shall be excluded from the national monument. (16 U.S.C. § 431 note.)

APPENDIX D: LETTER FROM U.S. FISH AND WILDLIFE SERVICE



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4000 Morrie Avenue
Cheyenne, Wyoming 82001

ESC-
PIFS
RECD-OSC-D
Director's Office

AUG 31 1999

DETC

Page # _____ P.I. _____
Date _____
Subject _____

ES-61411
gw/W.25/WY2800

August 26, 1999

Memorandum

To: Job Captain, National Park Service, Denver Service Center, Planning and Design Services

From: Field Supervisor, Ecological Services, Cheyenne, Wyoming (ES-61411) *[Signature]*

Subject: Species List for Devils Tower National Monument

Thank you for your letter received in this office August 13, regarding the initiation of a general management plan for Devils Tower National Monument. My staff has determined that the following threatened, endangered or proposed species may be present in the monument area.

Species	Status	Expected Occurrence
Black-footed ferret (<i>Mustela nigripes</i>)	Endangered	Potential resident in prairie dog (<i>Cynomys</i> sp.) colonies.
Bald eagle (<i>Haliaeetus leucocephalus</i>)	Threatened	Nesting. Winter resident. Migrant.
Mountain plover (<i>Charadrius montanus</i>)	Proposed	Grasslands statewide
Ute ladies'-tresses (<i>Spiranthes diluvialis</i>)	Threatened	Moist soils near wetland meadows, springs, lakes, and perennial streams.

Black-footed ferrets

Black-footed ferrets may be effected if prairie dog colonies are impacted (surface disturbing activities, etc.). If black-tailed prairie dog (*Cynomys ludovicianus*) colonies or complexes greater than 79 acres will be impacted, surveys for ferrets should be conducted even if only a portion of the colony or complex will be disturbed. If a field check indicates that prairie dog towns may be affected, you should contact this office for guidance on ferret surveys.

Mountain plover

In the Federal Register dated February 16, 1999, the U.S. Fish and Wildlife Service gave notice of a proposal to list the mountain plover (*Charadrius montanus*) as a threatened species pursuant to the Endangered Species Act of 1973, as amended. Available data indicate that population numbers have declined range-wide by more than 50 percent since 1966 to fewer than 10,000 birds. The mountain plover is a small bird associated with shortgrass prairie, plains, alkali flats, agricultural lands, cultivated lands, sod farms, prairie dog towns, and shrub-stepped landscapes at both breeding and wintering locales. Plovers may nest on sites where vegetation is sparse or absent, or near closely cropped areas, manure piles or rocky areas. Mountain plovers are rarely found near water and show a preference for previously disturbed areas or modified habitat.

Ute ladies'-tresses

Ute ladies'-tresses is a perennial terrestrial orchid with stems 20 to 50 cm tall, narrow leaves, and flowers consisting of few to many small white or ivory flowers clustered into a spike arrangement at the top of the stem. It blooms from late July through August, however, depending on location and climatic conditions, orchids may bloom in early July or still be in flower as late as early October. The Ute ladies'-tresses is endemic to moist soils near wetland meadows, springs, lakes, and perennial streams. It occurs generally in alluvial substrates along riparian edges, gravel bars, old oxbows, and moist to wet meadows at elevations from 4,200 to 7,000 feet. The orchid colonizes early successional riparian habitats such as point bars, sand bars, and low lying gravelly, sandy, or cobble edges, persisting in those areas where the hydrology provides continual dampness in the root zone through the growing season. Recent discoveries of additional orchid colonies in Wyoming and Montana indicate that surveys for and inventories of orchid occurrences continue to be an important part of orchid recovery planning and implementation.

In order to recover the orchid, it is important that surveys be conducted in areas of potential habitat and in response to impending impacts. Ute ladies'-tresses seems generally intolerant of shade and is found primarily in open grass and forb-dominated sites where vegetation is relatively open and not dense or overgrown. The plants usually occur as small scattered groups. Ute ladies'-tresses orchid can only be reliably located and identified when it is flowering, which typically occurs sometime during the period from mid-July through mid-September. Surveys are conducted by walking or otherwise closely scrutinizing areas of potential habitat looking for flowering stalks. Surveys conducted at other times of the year are not reliable and are therefore not acceptable to the Service for purposes of clearance under section 7 of the ESA. Surveys should be conducted by knowledgeable botanists trained in conducting rare plant surveys. The Service does not maintain a list of "qualified" surveyors but can refer those wishing to become familiar with the orchid to experts who can provide training/services.

Ute ladies'-tresses is not known to occur in or near the monument area. However, few if any surveys for these areas have been conducted. Given the known distribution of the orchid and the character of the watersheds, it is possible that the orchid could be discovered. If any suitable habitat for the orchid is found (survey guidelines attached), the Service strongly recommends the National Park Service to support survey efforts on federal land. If it is determined that any

Federal agency program or project "is likely to adversely affect" any listed species, formal consultation should be initiated with this office. Alternatively, informal consultation can be continued so we can work together to determine how the project could be modified to reduce impacts to listed species to the "not likely to adversely affect" threshold.

Federal agencies are also encouraged to consider sensitive species or species at risk in project review. Your consideration of these species is important in preventing their inclusion on the Threatened and Endangered Species List. The Wyoming Natural Diversity Database maintains the most current information on sensitive plants in Wyoming.

Migratory Birds

Please recognize that consultation on listed species may not remove your obligation to protect the many species of birds, raptors, and eagles protected under the Migratory Bird Treaty Act (MBTA) and Bald and Golden Eagle Protection Act (BGEPA).

The MBTA, 16 U.S.C. 703, enacted in 1913, prohibits the taking of any migratory birds, their parts, nests, or eggs except as permitted by regulations and does not require intent to be proven. Section 703 of the Act states, "Unless and except as permitted by regulations ... it shall be unlawful at any time, by any means or in any manner, to ... take, capture, kill, attempt to take, capture, or kill, or possess ... any migratory bird, any part, nest, or eggs of any such bird..." The BGEPA, 16 U.S.C. 668, prohibits knowingly taking, or taking with wanton disregard for the consequences of an activity, any bald or golden eagles or their body parts, nests, or eggs, which includes collection, molestation, disturbance, or killing.

Work that could lead to the take of a migratory bird or eagle, their young, eggs, or nests (for example, if you are going to erect new campgrounds, climbing routes, roads, etc.), should be coordinated with our office before any actions are taken. Removal or destruction of such nests, or causing abandonment of a nest could constitute violation of the above statutes. Removal of nests or nest trees is prohibited, but may be allowed once young have fledged and/or a permit has been issued. In either case, timing is a significant consideration and you need to allow for this in your project planning.

We appreciate your efforts to ensure the conservation of endangered and threatened species. If you have any further questions, please contact Jerry Williams (307) 772-2374, ext. 24.

cc: Director, WGFD, Cheyenne, WY
Non-game Coordinator, WGFD, Lander, WY

APPENDIX F: MEMORANDUM OF UNDERSTANDING REGARDING PRAIRIE DOGS

MEMORANDUM OF UNDERSTANDING

AMONG

STATE FISH AND WILDLIFE AGENCIES WITHIN BLACK-TAILED PRAIRIE DOG RANGE

Conservation and Management of Black-tailed prairie dog in North America

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to provide guidance for conservation and management of the black-tailed prairie dog (*Cynomys ludovicianus*) and the short to mid-grass habitats upon which the species depends. Black-tailed prairie dogs are an obligate short to mid-grass species that require large tracts of grasslands for their survival and viability. Black-tailed prairie dogs historically occurred in at least 11 states, one Canadian province, and two Mexican states. However, this species has been extirpated from Arizona. The current black-tailed prairie dog distribution has been reduced throughout the species' historic range. Habitat loss and fragmentation, inadequate protection from regulatory mechanisms, plague outbreaks, and control in the form of poisoning, have all been identified as factors in the reduction of the species' occupied range. The long-term trend for black-tailed prairie dog abundance rangewide is downward. The affected State Fish and Wildlife Agencies agree that cooperative efforts are necessary to collect and analyze data on black-tailed prairie dogs and their habitats so that comprehensive state plans may be formulated and implemented to maintain the broadest distribution and greatest abundance possible within the fiscal realities of the state agencies and cooperating partners.

II. Objectives

All affected State Fish and Wildlife agencies agree that black-tailed prairie dogs are an important natural component of the short to mid-grass ecosystem. As such, black-tailed prairie dogs serve as an indicator of the overall health of this important habitat type. Furthermore, the presence and abundance of black-tailed prairie dogs reflects humankind's commitment to maintaining all natural components of the short to mid-grass ecosystem so that all uses of this habitat type are sustainable over time.

The primary purpose of this MOU is to implement the Conservation Assessment and Strategy (Appendix) for the black-tailed prairie dog, thus establishing an open process by which to identify and carry out such actions that will conserve the species through participation of public and private partners. Specific conservation objectives are:

1. Maintain and increase where possible the present distribution of the black-tailed prairie dogs.

Memorandum of Understanding
 Re: Black-tailed Prairie Dog Conservation Assessment and Strategy

October 29, 1999
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2. Maintain and increase where possible the present abundance of the black-tailed prairie dogs.
3. Develop strategies using cooperative partnerships to maintain and enhance suitable and occupied black-tailed prairie dog habitats.
4. Conduct management experiments of a sufficient scale to demonstrate that population management can stabilize and enhance black-tailed prairie dog distribution and abundance.
5. Collect and analyze population and habitat data throughout the range of the black-tailed prairie dog for use in preparation of state management plans.
6. Develop partnerships with communities, industry, interested entities, and private landowners to accomplish conservation objectives.

III. Actions

It is the intent of the members of the affected State Fish and Wildlife Agencies to sustain and enhance the distribution and abundance of black-tailed prairie dogs through responsible collective management programs. These programs will include:

1. Identification of the present distribution of black-tailed prairie dog in each member state.
2. Collection of black-tailed prairie dog population data following standardized protocols throughout the range of the species.
3. Continuation of development of State Management Plans based on the local working group concept.
4. Validation of habitat evaluation and population viability models.
5. Completion of genetic analyses across the range of the black-tailed prairie dog to more effectively define and manage individual populations.
- 6. Development of cooperative partnerships with interested individuals, and private, state, tribal, and federal land managers.
7. Support and implement the revised black-tailed prairie dog population and habitat management guidelines developed through this conservation effort.
8. Further develop, implement, and amend as necessary, the objectives, strategies, and tasks in the Conservation Assessment and Strategy for black-tailed prairie dogs as information becomes available.
9. As needed for this conservation effort, and as available, provide personnel with facilities, equipment, logistical support to implement the conservation strategies.
10. Designate a member to the Black-tailed Prairie dog Conservation Team.
11. Participate regularly in conservation team and work group meetings to enhance communication and cooperation, and help develop annual and other work plans.
12. Develop and distribute educational material on this conservation effort.
13. Provide ongoing review of, and feedback on this conservation effort.
14. Cooperate in developing major media releases and media projects.
15. Keep local governments, communities, private citizens, and other interested and affected parties informed on the status of this conservation effort, including ways that might provide local economic benefits.
16. Assist in generating the funds necessary to fully implement this conservation effort.

Memorandum of Understanding

October 29, 1999

Re: Black-tailed Prairie Dog Conservation Assessment and Strategy

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IV. Responsibilities

1. Each state will collect data as recommended by the Black-tailed Prairie Dog Conservation Team within the constraints of their budgetary process.
2. All State Fish and Wildlife agencies will work cooperatively to maintain and enhance black-tailed prairie dog populations and their habitats.
3. Any State Fish and Wildlife Agencies deciding to terminate their participation in this MOU will provide 60-days written notice to the other cooperators.
4. This MOU shall have a term of five years from the last date written below. At the end of this period, this MOU will expire unless it is canceled, extended, or renewed.

V. Approval

We, the undersigned designated officials, do hereby approve this Memorandum of Understanding and execute it as of the last date written below.

Approved Steve K. Truell (for) Date 11/3/99
Arizona Game and Fish Department Duane L. Shroufe, Director

Approved _____ Date _____
Colorado Division of Wildlife

Approved Steve Williams Date 10/28/99
Kansas Department of Wildlife and Parks Kansas execution subject to DA-146a (Attach A)

Approved Patricia Graham Date 10-24-99
Montana Department of Fish, Wildlife, and Parks

Approved Rep Amack (rel for) Date 14 Oct 99
Nebraska Game and Parks Commission

Approved Jay L. Lamm Date 2-1-2000
New Mexico Game and Fish Department Subject to Attach.B

Approved _____ Date _____
North Dakota Game and Fish Department

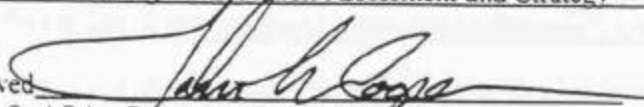
Approved Bryce D. Dwyer Date 10-17-99
Oklahoma Department of Wildlife Conservation

Memorandum of Understanding
Re: Black-tailed Prairie Dog Conservation Assessment and Strategy

October 29, 1999

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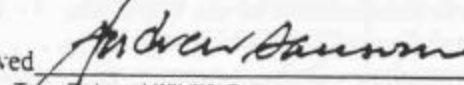
Approved


South Dakota Department of Game, Fish and Parks

Date

10/26/99

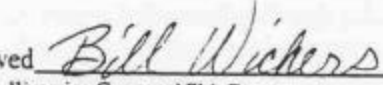
Approved


Texas Parks and Wildlife Department

Date

11/3/99

Approved


Wyoming Game and Fish Department

Date

10/21/99

STATE OF ARIZONA
SPECIAL CONDITIONS

1. All cooperators agree to comply with the Governor's Executive Order No. 75-5, entitled "Prohibition of Discrimination in State Contracts - Discrimination in Employment by Government Contractors and Subcontractors."
2. All cooperators hereby are put on notice that this MOA is subject to cancellation by the Governor of the State of Arizona, pursuant to Arizona Revised Statutes Section 38-511.
3. To the extent required pursuant to Arizona Revised Statutes Section 12-1518 and any successor statutes, the cooperators agree to use arbitration, after exhausting all applicable administrative remedies, to resolve any dispute arising out of this agreement, where not in conflict with Federal Law.
4. Pursuant to Arizona Revised Statutes Sections 35-214 and 35-215, and Section 41-1179.04 as amended, all books, accounts, reports, files, and other records relating to any contracts issued under the umbrella of the MOA shall be subject at all reasonable times to inspection and audit by the State for five years after completion of the contract. Such records shall be reproduced as designated by the State of Arizona.

:bvp

State of Kansas
Department of Administration
DA-146a (Rev. 6-96)

Attachment A

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 6-96), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 19____.

1. TERMS HEREIN CONTROLLING PROVISIONS

It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.

2. AGREEMENT WITH KANSAS LAW

All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

3. TERMINATION DUE TO LACK OF FUNDING APPROPRIATION

If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. DISCLAIMER OF LIABILITY

Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. ANTI-DISCRIMINATION CLAUSE

The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. ACCEPTANCE OF CONTRACT

This contract shall not be considered accepted, approved or otherwise effective until the statutory required approvals and certifications have been given.

7. ARBITRATION, DAMAGES, WARRANTIES

Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

8. REPRESENTATIVE'S AUTHORITY TO CONTRACT

By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contract agrees to be bound by the provisions thereof.

9. RESPONSIBILITY FOR TAXES

The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. INSURANCE

The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss of damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.

11. INFORMATION

No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.